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## IN THE UNITED STATES DISTRICT COURT

6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 JUDI BARI, et al., No. C 91-01057 CW  
9 Plaintiffs,  
10 v.  
11 UNITED STATES OF AMERICA, et al., ORDER DENYING  
12 Defendants. PLAINTIFF DARRYL  
13 \_\_\_\_\_ / CHERNEY'S  
14 On August 4, 2010, Plaintiff Darryl Cherney filed an objection  
15 to the intention of Defendant United States to destroy evidence  
16 related to this case. Plaintiff also sought a sought an "order in  
17 rem" granting him access to the evidence so that he can arrange for  
18 its testing. Plaintiff supported his motion with the Declaration  
19 of James Wheaton. The government responded to Plaintiff's  
20 objection, opposed his motion for an in rem order and moved to  
21 strike the Wheaton Declaration. Plaintiff opposed the government's  
22 motion to strike. Pursuant to Civil L.R. 72-1, the Court referred  
23 to the motions to Magistrate Judge James Larson. (Docket No. 671.)  
24  
25 On March 21, 2011, Magistrate Judge Larson granted Plaintiff's  
26 motion and directed the government to  
27 preserve against loss, alteration, destruction, or  
28 contamination all components and remnants of the Oakland  
and Cloverdale bombs, along with the "LP Screws  
Millworkers" sign, the "lifted" fingerprints, and any

1       fingerprint analysis; and further orders that the same be  
2 transferred to a reliable third-party custodian, for  
3 examination and testing, when an appropriate custodian is  
4 identified by the Court.

5       (Docket No. 672, at 23.) Magistrate Judge Larson also denied the  
6 government's motion to strike.

7       On April 5, 2011, the government filed a motion, seeking de  
8 novo review of Magistrate Judge Larson's March 21 Order. On April  
9 7, 2011, Plaintiff filed the current motion, asking the Court to  
10 strike the government's April 5 motion, arguing that it was  
11 untimely, that the government consented to Magistrate Judge  
12 Larson's jurisdiction over the matter and that, even if it did not  
13 so consent, de novo review of the Order is not available.

14       Plaintiff's motion to strike is DENIED. (Docket No. 674.)  
15 The deadline for the government's motion for de novo review was  
16 April 7, 2011.<sup>1</sup> Thus, it is not untimely. Because Plaintiff does  
17 not identify any written consent by the government to Magistrate  
18 Judge Larson's jurisdiction, 28 U.S.C. § 636(c)(1) does not apply.  
19 Finally, Plaintiff does not establish that de novo review by this  
Court is not available. The motion was referred pursuant to 28

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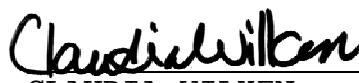
21       <sup>1</sup> Magistrate Judge Larson's order was filed March 21. The  
22 government was permitted to file objections within "fourteen days  
23 after being served with a copy." 28 U.S.C. § 636(b)(1). In  
24 computing time, parties "exclude the day of the event that triggers  
25 the period; "count every day, including intermediate Saturdays,  
26 Sundays, and legal holidays;" and "include the last day of the  
27 period." Fed. R. Civ. P. 6(a)(1). Based on these instructions,  
the fourteen-day period expired April 4, 2011. However, Federal  
Rule of Civil Procedure 6(d), which pertains to circumstances in  
which a "a party may or must act within a specified time after  
service," adds three days to this period because the March 21 Order  
was served by electronic filing. See Fed. R. Civ. P. 5(b)(2)(E);  
General Order 45 IX.D. Because § 636(b)(1) requires action "after  
being served," Rule 6(d) applies. Thus, the government's deadline  
was April 7, 2011.

1 U.S.C. § 636(b)(1)(B), under which an objecting party may seek de  
2 novo review.

3 The government's motion was noticed for hearing on June 9,  
4 2011, but was subsequently taken under submission on the papers.  
5 Plaintiff's opposition to the government's motion shall be due May  
6 19, 2011. The government's reply, if necessary, shall be due May  
7 26, 2011.

8 IT IS SO ORDERED.

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10 Dated: 4/26/2011



CLAUDIA WILKEN  
United States District Judge